SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1948.

Nos. 14 and 15.

INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, A. F. of L., LOCAL 232; ANTHONY DORIA, CLIFFORD MATCHEY, WALTER BERGER, ERWIN FLEISCHER, JOHN M. CORBETT, OLIVER DOSTALER, CLARENCE EHRMANN, HERBERT JACOBSEN, LOUIS LASS, Petitioners,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, HENRY RULE and J. E. FITZGIBBON, as Members of the Wisconsin Employment Relations Board; and BRIGGS & STRATTON CORPORATION, a Corporation, Respondents.

PETITIONERS' REPLY BRIEF.

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INDEX.

IV.

V.

Cases Cited.

Statutes Cited

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PETITIONERS' REPLY BRIEF.

While petitioners in their first brief have already anticipated in some measure the brief of respondents, this reply brief is filed because it appears to petitioners that respondents, particularly the respondent Board and some of the Amici Curiae, seek to avoid reversal of the judgment by minimizing the language and judgment of the Order assailed, and seek to justify the judgment on the basis of some alleged national policy expressed in the federal act, which policy it is asserted militates against any finding in this case that the judgment is in conflict with the National Labor Relations Act in its original form or as amended.

ARGUMENT.

I.

The Judgment Is Inconsistent With and Contrary to the Declared Policy and Purposes of the Federal Act as Well as in Conflict With Its Provisions.

One of the principal arguments made by respondents and Amici Curiae is that the activities herein involved are such that they are contrary to and defeat the purposes and policy of the National Labor Relations Act. The argument runs somewhat like this: the Act was meant to encourage good faith collective bargaining and to discourage interruptions of production with might affect interstate commerce, and therefore, the restraint of the stoppages herein is consistent with the Act.

It must be conceded, of course, that one of the declared purposes of the federal act is to encourage good faith collective bargaining for the purpose of preventing, insofar as possible, interruptions which might have an undesirable effect upon the flow of commerce. But to argue that, therefore, work stoppages are contrary to the policy or purposes of the Act is to argue that all strikes should be abolished and abandoned regardless of what form or nature they may take. The express language of Sections 7 and 13 of the Act belies such construction. The Congress obviously had no such intention in mind when the Act was passed.

What respondents and Amici Curiae have overlooked completely is the fact that there can be no good faith collective bargaining unless the employees can lay their collective economic strength on the table alongside the corporate economic strength of the employer, and in this way

meet and treat with the employer on a comparatively equal basis. This was expressly recognized in the case of **American Steel Foundries v. Tri-City Central Trades Council**, 257 U. S. 184, 209, wherein it was pointed out that:

> "Union was essential to give laborers an opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body, in order, by this inconvenience, to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose, has, in many years, not been denied by any Court. The strike became a lawful instrument in a lawful economic struggle."

And in the case of **National Labor Relations Board v. Jones & Laughlin Steel Corporation**, 301 U. S. 1, 34, this Court pointed out that Congress expressly safeguarded the legality of collective action which had become a generally recognized right.

Section 1 of the National Labor Relations Act, setting forth the Congressional findings and policies, emphasizes "the inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract" which results, not in strikes, but "recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries." It was, therefore, "declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce" not only "by encouraging the practices and procedure of collective bargaining," but also "by protecting the exercise by workers of full freedom of association * * * for the purpose of

negotiating the terms and conditions of their employment or other mutual aid or protection."

In other words, the underlying policy of the National Labor Relations Act was to enable working men, free from interference on the part of the employer or the state, to so strengthen their bargaining position that they would have a more nearly equal voice in establishing their wages, hours, and working conditions and to, if necessary, engage in such concerted activities, including strikes, which would assure them of such bargaining power.

The only type of strike which might run counter to the policy of the law would be the organizational type of strike which results from a refusal on the part of management to recognize the designated representative of a majority of its employees. That type of strike was discouraged by establishing procedure for the determination of collective bargaining representatives by the National Labor Relations Board (Sec. 9), and by restricting any effort on the part of the employer to interfere with his employees in the exercise of their right of self-association, whether such interference be by aiding or encouraging one labor organization as against another or by discriminating against employees who seek to exercise their right to form, join, and assist labor organizations [Secs. 8 (a) (1), (2) and (3)].

However, even the so-called "recognition strike" was not outlawed or banned by the National Labor Relations Act by virtue of Section 13. Nor was it outlawed by the amended National Labor Relations Act except in those cases where there is a certified bargaining agent [Sec. 8 (b) (4) (C)].

Any argument, therefore, that work stoppages while collective bargaining is going on are neither protected by

the National Labor Relations Act nor consistent with the purposes and policies of the Act is completely untenable.

Nor is there any merit to the suggestion of Amici Curiae and respondents that these series of strikes during the course of collective bargaining negotiations are an attempt to avoid or evade good faith collective bargaining. On the contrary, the strikes were for the purpose of encouraging the making of a collective bargaining agreement in circumstances where an employer had refused to accept the recommendations of a Tri-Partite Panel established and appointed by the National War Labor Board, had refused to comply with an order of the Regional War Labor Board, and, after January 1, 1946, had refused to comply with the final order of the National War Labor Board. These refusals related not only to those matters which the Company thought might be unlawful under Wisconsin law, but to all other matters of an economic nature which are unaffected by Wisconsin law, such as grievance procedure, wages, etc. (R. 43).

The Company boldly took the position in these proceedings that "because the war had ceased we did not believe we were morally or legally obliged to comply with such order." (R. 41).

This Court pointed out in the case of **National Labor Relations Board v. Mackay Radio and Telegraph Company**, 304 U. S. 333, that

> "The wisdom or unwisdom of the men, their justification or lack of it, in attributing to respondent an unreasonable or arbitrary attitude in connection with the negotiations, cannot determine whether, when they struck, they did so as a consequence of or in connection with a current labor dispute."

And as petitioners have pointed out in their original brief, the right to strike in a dispute over wages, hours and working conditions remains unaffected by the Labor Management Relations Act of 1947, one of the authors of that Act stating expressly that it "recognizes freedom to strike when the question involved is the improvement of wages, hours and working conditions, when a contract has expired and neither side is bound by a contract." 93 Cong. Rec. 3950, 3951 (1947).

The strikes in this case were to encourage good faith collective bargaining rather than to discourage it. The strikes occurred while collective bargaining was going on and because of dissatisfaction with the progress being made. The employees withheld their services in the hope "by this inconvenience to induce him (the employer) to make better terms with them." **American Steel Foundries** case, supra. And to "exert pressure recognized as lawful." **National Labor Relations Board v. Fansteel Metallurgical Corporation**, 306 U. S. 240, 256.

There is no suggestion in this record that the activities engaged in by the employees were arbitrary, capricious or whimsical, or that such activities were motivated by other than an honest desire on their part to conclude what they considered to be a fair and reasonable collective bargaining agreement.

Such activities, therefore, are not only protected by the very language of the National Labor Relations Act, but fall squarely within the declared purposes and policies of the Act—particularly that policy which recognizes that recurrent business depressions can be avoided only if employees can collectively prevent the depression of their wage rates or their purchasing power, and foster stabilization of competitive wage rates and working conditions.

within and between industries, by combining and acting for their mutual aid and protection.

II.

There Was No Attempt Here to Gain Unilateral Control Over Employment or Production.

There is again asserted in the briefs of respondents and Amici Curiae that the particular tactics involved here were attempts to exert unilateral control over the means of production, since there was no intent on the part of the employees to absolutely quit their employment, but a hope to return. It is also suggested that this tactic can be compared with the sitdown strikes so severely condemned by the Court in the **Fansteel** case, supra.

Petitioners have already met this argument at pages 41 through 46 of their original brief wherein it was pointed out that neither the State Board nor the State Court based their order upon any such concept nor did they rely upon the "unauthorized possession" part of the statute to support the judgment. The controlling feature, insofar as the State Board and Court were concerned, was the interruption of production in the absence of a state-defined strike. We also pointed out that the employer was not without recourse or remedy, although the question was not involved in this case, in that the employer could, under the decisions of this Court, particularly in the **Mackay** case, supra, replace the economic strikers or could, in the alternative, close down the plant and compel the full-time strike which petitioners were seeking to avoid.

The argument of respondents and Amici Curiae in this respect, if carried to its logical extreme, would mean that if in a full-time strike the labor market in a particular area is such that replacement of strikers cannot easily

take place, this condition would result in outlawing of that full-time strike because, in those circumstances, the employer is deprived of the manpower to make the means of production of use to him. Surely, the test of legality of an off-the-premise work-stoppage is not dependent upon the ease of replacing the absent employees.

There is nothing in this case which is at all suggestive of the situation with which this Court dealt so strongly in the **Fansteel** case where the employees took physical possession of property belonging to the employer and defied, by violence, the law enforcement officers of the state who sought to eject them as trespassers. In the instant case on each occasion the employer had full and free possession of its property to do with as it saw fit.

This argument of respondents and Amici Curiae merely serves to emphasize that which petitioners claim, and that is, that here the State seeks to compel the employees to remain on the job or to quit entirely but will not permit a leaving with an intent to return.

Whether the employer may, instead of replacing or locking out the striking employees, discharge such employees for breach of company rules, is not involved in this case. Had the company sought to make such discharges, the matter would then have been submitted to the National Labor Relations Board for determination. Petitioners would then argue that there could be replacement, but no discharge insofar as these economic strikers are concerned. Conceivably, the Board might hold that while these activities were protected activities under the Act, there would be no reinstatement or that reinstatement would be an abuse of discretion under the circumstances in view of the decisions of this Court in **National Labor Relations Board v. Columbian Enameling & Stamp-**

ing Co., 306 U. S. 292; **National Labor Relations Board v. Sands Mfg. Co.**, 306 U. S. 332; **Southern Steamship Co. v. N. L. R. B.**, 316 U. S. 31, and **National Labor Relations Board v. Fansteel**, supra. These cases, however, went no further to hold than that the Board abused the discretionary powers placed in it by directing reinstatement of economic strikers under the particular circumstances of those cases. The cases did not hold that the concerted activities did not otherwise fall within the protection of the law.

In the **Columbian Enameling & Stamping Co.** case, supra, the decision turned upon the Court's disagreement with the Board on the question of whether there was a refusal to bargain in violation of the law. Justices **Black** and **Reed** dissented.

In the **Sands Mfg. Co.**, Case, supra, the Court disagreed with the Board's holding that the employees had been locked out for the purpose of discriminating in derogation of rights under the law, and similarly rejected the Board's findings that the company had refused to bargain collectively. The Court found that the strike, being in violation of contract, was in the nature of an absolute quit, and that the company, therefore (p. 344) "was at liberty to treat them as having severed their relations with the company because of their breach and to consummate their separation from the company's employ by hiring others to take their places." Justices **Black** and **Reed** dissented.

It is to be noted, that in the instant case there was no contract and hence there could be no breach of contract.

In the **Southern Steamship** Case, supra, the Court was confronted with a strike which violated the Federal Mutiny Statute. The strikers while in the service of the employer not only refused to perform their duties but remained on

Board their ship and so deprived the owners and officers of control. The Court pointed out that this situation differed from that in an industrial plant where "the employer is confronted only with the necessity of placing new men at the machines."

The decision of the Court was based upon those controlling factors, and went only to the validity of the order of the Board which directed reinstatement of the mutineers. The Court also held, however, that, even though reinstatement was not an appropriate remedy under the circumstances, other means of redress were available under the National Labor Relations Act and the Court concluded by stating (p. 48):

> "And what is more, nothing that we have said would prevent the union from striking, picketing or resorting to any other means of self-help, so long as the time and place it chooses do not come within the express prohibition of Congress."

Part of the Board's order directing the employer to comply with the provisions of the Act was sustained.

Justices Reed, Black, Douglas, and Murphy dissented, during the course of which dissent it was pointed out that the decision in the **Fansteel** Case went solely upon the commission of serious crime, and that in the **Fansteel** Case all that was held was that the Board had exceeded the limits of its discretion in directing reinstatement of the sitdown strikers because of the "extremes of conduct which leave no discretion to the Board."

And the **Fansteel** Case, supra, recognizes the right to strike,—"that the employees could lawfully cease work at their own volition because of the failure of the employer to meet their demands,"—that employees could quit

their work "in the exercise of pressure recognized as lawful,"—but that where employees engage in criminal acts they accept "the risk of the termination of their employment upon grounds aside from the exercise of the legal rights which the statute was designed to conserve."

The Court then concluded that the Board abused its discretion in directing reinstatement "after discharge for illegal acts."

In the concurring opinion of Justice Stone it was pointed out that the law affords no protection from termination of the employee-employer relationship "for reasons dissociated with the stoppage of work." And Justice Stone thought that as to the 14 employees who were not actually discharged by the employer, although they aided and abetted the sitdown strike, the Board did have the discretion to direct their reinstatement.

Justices Reed and Black dissented in part holding that under the circumstances the Board did not improperly exercise its discretion in directing reinstatement of strikers who had gone out on strike because of employer unfair labor practices, even though during the course of such strike criminal activities had been engaged in.

It is apparent from these cases that the right to strike or work stoppages as such were not held to be outside of the protection of the National Labor Relations Act, but only that reinstatement of strikers had to be conditioned upon and subject to the attendant circumstances of the strike, and upon a determination of whether there was an actual severance of the employment relationship.

The mere fact that the employees here hoped to find their jobs available to them when they returned the following day cannot be stretched to reasonable comparison of the stoppages to sitdowns, mutinies or breaches of contract.

These same observations can be made with respect to the lower court cases cited by respondents and Amici Curiae.

For example, the case of **National Labor Relations Board v. Draper Corp.**, 145 Fed. (2d) 199, cited by respondent Board, did not involve the question of whether the right to strike was protected under the National Labor Relations Act, but only the question of whether or not the employer had a right to discharge employees who struck during the course of negotiations and without the authority of the collective bargaining representative who was then representing them in negotiations. The Court said expressly:

> "What is involved here, however, is not the right to strike, but the right of the employer to discharge employees who have engaged in insubordinate conduct violative of the statutory provisions for collective bargaining."

Similarly, the case of **Home Beneficial Life Insurance Co. v. National Labor Relations Board**, 159 Fed. (2nd) 280, did not involve the type of situation which was here involved. In that case the employees did not quit their jobs completely for limited periods of time, but performed all the duties of their job, except the one duty of reporting to their offices in the morning. The case would be analogous only if here the employees stayed on the job, did everything else required of them, but refused to perform a certain operation. That, of course, was not the situation. In no case cited by respondents or Amici Curiae has any court held that the right to strike was not guaranteed or preserved by the National Labor Relations Act. In those cases, all that was involved was whether or not reinstatement would serve the purposes of the Act under the particular circumstances of the case.

III.

The Order Comprehends More Than Instigation of the Activities and Includes Participation.

The respondent board in answering the constitutional questions raised herein urges that actual "participation" in the activities is not covered by the judgment but rather only "instigation."

However, paragraph (a) of the order comprehends both. By the order the petitioners, including the union, are directed to cease and desist from two activities: (1) engaging in any concerted efforts to interfere with production by arbitrarily calling union meetings, and inducing work stoppages during regularly scheduled working hours; and (2) engaging in any other concerted activities to interfere with the production of the complainant except by leaving the premises in an orderly manner for the purpose of going on strike.

The second provision of paragraph (a) of the cease and desist order clearly covers participation by all employees in the leaving of the premises unless such leaving squares with the Wisconsin definition of strike.

And we have the word of the Wisconsin Court that this is so since the Court stated flatly "what (a) does, and all that it does, is to ban the individual defendants **and the members of the union** from 'engaging in concerted effort' to interfere with production by doing the acts instantly involved" (R. 113). (Emphasis ours.)

We have already pointed out in our original brief at page 55 that in Wisconsin a Union has no existence independent of its membership and that what is forbidden to the Union is forbidden to its members.

Finally, even if the order were limited to instigation and not participation, this would not, in our opinion, alter

the application of the constitutional provisions, since it surely must follow that if the employees of the respondent corporation have the right collectively to do that which was done here under the constitution of the United States, then such employees individually, collectively, or through their duly designated agents, may instigate or induce such activities.

IV.

Section 111.06 (2) (e), Wisconsin Statutes, Is Involved in This Case.

The respondent Board again asserts that Section 111.06 (2) (e) does not support the order and that the Board did not in fact base any remedy upon alleged violation of that section. It is argued that the only significance to be given to the state court's reliance upon Section 111.06 (2) (e) is that violation of this Section may give rise to other proceedings based upon such violation.

As we understand the argument of the state, it is urged that having found a violation of Section 111.06 (2) (e), the result is to deprive petitioners of the right to engage in those acts which are enumerated in Section 103.53 of the Wisconsin Statutes.

This Section of the Wisconsin Statutes follows the Norris-LaGuardia Act very carefully and very closely. It provides (Sec. 103.53):

> "(1) The following acts, whether performed singly or in concert, shall be legal:
>
> "(a) Ceasing or refusing to perform any work or to remain in any relation of employment regardless of any promise, undertaking, contract or agreement in violation of the public policy declared in Section 103.52;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in Section 103.52;

"(c) Paying or giving to, any person any strike or unemployment benefits or insurance or other moneys or things of value;

"(d) By all lawful means aiding any person who is being proceeded against in, or is prosecuting any action or suit in any court of the United States or of any state;

"(e) Giving publicity to and obtaining or communicating information regarding the existence of, or the facts involved in, any dispute, whether by advertising, speaking, patrolling any public street or any place where any person or persons may lawfully be, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof;

"(f) Ceasing to patronize or to employ any person or persons, but nothing herein shall be construed to legalize a secondary boycott;

"(g) Assembling peaceably to do or to organize to do any of the acts heretofore specified or to promote lawful interests;

"(h) Advising or notifying any person or persons of an intention to do any of the acts heretofore specified;

"(i) Agreeing with other persons to do or not to do any of the acts heretofore specified;

"(j) Advising, urging, or inducing without fraud, violence, or threat thereof, others to do the acts heretofore specified, regardless of any such undertaking or promise as is described in Section 103.52; and

"(k) Doing in concert any or all of the acts heretofore specified shall not constitute an unlawful combination or conspiracy;

"(1) Peaceful picketing or patrolling, whether engaged in singly or in numbers, shall be legal.

"(2) No court, nor any judge or judges thereof shall have jurisdiction to issue any restraining order or temporary or permanent injunction which, in specific or general terms, prohibits any person or persons from doing, whether singly or in concert, any of the foregoing acts."

If, as is asserted by the State, the finding of violation of Section 111.06 (2) (e) in this case has no significance other than to result in forfeiture of the rights which are enumerated above, then surely the law is unconstitutional and void.

Examination of the acts which may now become unlawful because of finding of violation of 111.06 (2) (e) demonstrate clearly that here there is a restraint on the right to picket, free speech, lawful assemblage, etc. For all of the reasons previously set forth in petitioners' original brief, the order, insofar as it is based on 111.06 (2) (e) and the statute itself, are illegal, void, and of no effect whatsoever because they make the exercise of these basic constitutional rights dependent upon the majority vote.

The fact remains that 111.06 (2) (e) is in this case upon the insistence of the Attorney General and by the exact language of the Supreme Court of the State of Wisconsin. Whether it is in the case as a basis for restraint of continuation of the strikes herein involved, or whether it is here because it carries with it restraints on other types of activities in connection with those strikes, is immaterial. On either score it is void.

V.

Reply to Respondents' Argument on the Jurisdictional Question.

The respondent Board points out that Wisconsin has consistently followed the "case by case" method of determining jurisdiction in matters involving or growing out of labor relations. It is precisely this "case by case" method which has been rejected by this honorable court in the **Bethlehem Steel** case.

Argument is then made that it is not in every case that the National Labor Relations Board will take jurisdiction, and that since jurisdiction was not taken in this particular case with respect to these particular unfair labor practices, the state was free to go ahead. However, the State over-simplifies the argument and overlooks some of the pertinent facts.

In the first place, the National Labor Relations Board did assume jurisdiction over the employment relationship generally and certified the petitioning union as the collective bargaining agent (R. 33, 40). In order for the Board to do this it must have found that the dispute over representation would affect or involve interstate commerce. If a dispute over representation would affect or involve interstate commerce, then surely strikes involving virtually all of the employees would similarly affect interstate commerce.

In the second place, the state overlooks the fact that both the company and the union entered into a stipulation that the company was "engaged in interstate commerce under the terms of the National Labor Relations Act" (R. 43).

In the third place, the state offers no suggestion of how it can be determined whether or not the National Labor

Relations Board would accept jurisdiction in a particular case. Apparently, it is the state's position that in order to avail one's self of the jurisdictional bar in state board proceedings, one party or the other immediately upon the service of a state complaint must go to the National Labor Relations Board and file a similar complaint and then wait the determination of the National Labor Relations Board as to whether or not it will act on that similar complaint, and probably also wait until it is determined in which way the National Board will act. In the meantime, the State Labor Board proceedings are held in abeyance. Then, if the National Board refuses to act, the state board proceedings go ahead.

Surely there is no other way to determine in a particular case whether or not the National Labor Relations Board will act, nor in what way it will act, aside from our experience as to whether or not it usually does act under same or similar circumstances. It is precisely because of this that the "case by case" method was rejected by this Court in the **Bethlehem** case.

The state makes the further argument that the National Labor Relations Act as amended does not cover this particular type of tactic. It is submitted that the question is not whether the National Labor Relations Act relates specifically to this particular type of tactic, but whether or not Congress has evinced an intention to assume general and exclusive control over unfair labor practices on the part of employees and their labor unions, and has prescribed a way and method in which those unfair labor practices are to be handled by the administrative agency.

Congress, through enactment of the Labor Management Relations Act, has definitely proscribed certain concerted activities, whether they be called strikes or stoppages of work. The proscriptions are contained in Section 8 (b) (4)

of the Act. The inescapable inference, particularly in view of the language of Section 7 and Section 13, is that all other activities not so proscribed are recognized as legitimate exercises of the concerted activities under the national law.

With respect to matters such as violence, mass picketing or obstructions of the street, it can safely be assumed that those matters remain within the control of the states, since those never have been considered permitted activities under the federal law. The real answer would seem to be that activities which in and of themselves are not in violation of ordinary criminal laws and are not proscribed by Section 8 (b), fall within the protection of the national Act and are free from restraint by the state; but activities involving violence, mass picketing, obstructions, breaches of the peace, crimes and similar matters remain subject to state control since they do not fall within the contemplation of Sections 7 and 13.

Petitioners again emphasize that the activities in the instant case were not found to be unlawful, either because of their nature, their frequency or lack of orderliness, but only because they interfered with production and did not fall within the state definition of "strike." There, therefore, is not here involved the right of the state to handle on an administrative level those matters which would be subject to the criminal processes of the state. There is not here involved a type of activity which, because of its very nature is excluded from the protection of Sections 7 and 13 of the Act. There is here involved only peaceful, orderly activities. They are not proscribed by Section 8 (b) of the federal Act. They are not otherwise unlawful under criminal statute or codes. They, therefore, must fall within the protection of Sections 7 and 13.

CONCLUSION.

Argument is made by the state and Amici Curiae that consistent with the scheme and purpose of the Wisconsin law to protect the interests of employes, employers and the public, the judgment herein must be affirmed. But there is a remarkable lack of showing how the interference with production in this type of case is any more prejudicial to those interests than that resulting from the concededly legal full-time, continuous strike. That there may be any greater prejudice to the public resulting from the orderly withdtawal from their place of employment by employees engaged in the manufacture of small gasoline engines and automobile keys in this type of strike, as distinguished from the prejudice resulting from the "greater quitting" involved in the continuous strike, is rather difficult to see.

Nor should the appeal to "Fair Play" strike any more responsive chord than the appeal of these employees struck in the corporate breast when request was made to put into practice the recommendations and directives of the United States Government.

The fact is that there was nothing more unfair about these activities than there is in any legitimate strike or other concerted activity. As long as in a free country and in a free economy workingmen are required to match their power to withhold their services against the economic withholding power of those who own the means of production in order to attain a fair share of the fruits of their labor, temporary inconvenience and hardship to all is the very small cost of freedom which all must willingly bear and share.

To yield support of this basic concept because the means of withholding services are either novel or unique, or be-

cause one particular employer may find it difficult to adequately cope with it, would be but the start of an encroachment which would soon result in complete destruction of basic civil rights and liberties, as well as destruction of the principles upon which our free economy is based.

It is submitted that this case does not present justification for such starting point, if indeed there ever can be such justification; and it is further submitted that no matter how desirable it may be to encourage "pragmatic regulation" by the state, such encouragement may not embrace the approval of regulation which is not only flatly contrary to the express federal legislative policy, but in violation of constitutional guarantees as well.

Respectfully submitted,

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